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Attorneys for Defendant  
7-ELEVEN, INC.

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

KIMBERLY ALEKSICK,  
individually and on behalf of other  
members of the general public  
similarly situated,

Plaintiffs,

v.

7-ELEVEN, INC., a Texas  
Corporation, MICHAEL TUCKER; an  
individual; and DOES 1-50, Inclusive,

Defendants.

CASE NO.: 08 CV 0059 J WMc

**DECLARATION RE:**

**(1) SERVICE OF PETITION AND  
NOTICE OF REMOVAL UPON  
PLAINTIFF;**

**(2) FILING OF NOTICE TO CLERK  
IN IMPERIAL COUNTY SUPERIOR  
COURT**

**(3) FILING OF PROOFS OF  
SERVICE**

I, Lindley P. Fraley, declare as follows:

1. I am an attorney duly licensed to practice before this Court and  
before all of the courts of the State of California, and I am an associate with the law

1 firm of Payne & Fears LLP, counsel of record for Defendant 7-ELEVEN, INC.  
2 (“defendant”). I have personal knowledge of the matters set forth in this declaration  
3 and, if called as a witness, could and would testify competently thereto.

4 2. On January 10, 2008, I caused Defendant’s Petition and Notice  
5 of Removal of Civil Action Under 28 U.S.C. §§ 1441 and 1446 (the “Notice of  
6 Removal”) to be filed with this Court.

7 **NOTICE TO THE CLERK OF THE SUPERIOR COURT**

8 3. On January 10, 2008, after filing the Notice of Removal in this  
9 Court, I caused Defendant’s Notice to Clerk of the Superior Court, County of  
10 Imperial, of Removal of Civil Action to United States District Court for the  
11 Southern District of California (the “Notice to Clerk”), to be filed in the Imperial  
12 County Superior Court, where this action had been pending. A copy of the Notice  
13 of Removal was attached as Exhibit “A” to the Notice to Clerk. A true and correct  
14 copy of the Notice to Clerk, file-stamped by the Imperial County Superior Court, is  
15 attached as Exhibit “A” hereto.

16 **NOTICE TO PLAINTIFF**

17 4. On January 10, 2008, after filing the Notice of Removal with this  
18 Court, I caused Defendant’s Notice to Plaintiff of Removal of Civil Action to United  
19 States District Court for the Southern District of California (the “Notice to  
20 Plaintiff”) to be served upon Plaintiff. A true and correct copy of the Notice to  
21 Plaintiff is attached as Exhibit “B” hereto.  
22  
23  
24  
25  
26  
27  
28

PAYNE & FEARS LLP  
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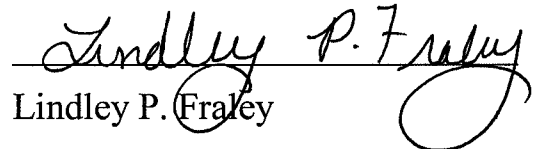
**PROOFS OF SERVICE**

5. Attached hereto as Exhibit "C" is a proof of service of the Notice of Removal upon Plaintiff.

6. Attached hereto as Exhibit "D" is a proof of service of the Notice to Clerk upon Plaintiff.

7. Attached hereto as Exhibit "E" is a proof of service of the Notice to Plaintiff upon Plaintiff.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct, and that this Declaration is executed this 11th day of January 2008, at Irvine, California.

  
Lindley P. Fraley

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INDEX OF EXHIBITS

EXHIBIT "A": Notice to Clerk  
EXHIBIT "B": Notice to Plaintiff  
EXHIBIT "C": Proof of Service of Notice of Removal Upon Plaintiff  
EXHIBIT "D": Proof of Service of Notice to Clerk upon Plaintiff  
EXHIBIT "E": Proof of Service of Notice to Plaintiff upon Plaintiff

381852.1

**EXHIBIT "A" DECLARATION OF PROOF OF SERVICE**

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 01/14/2008 10:42 17145411978  
 01/11/2008 17:10 FAX 7808379111

FIRST LEGAL  
 DILLON'S

PAGE 04/06

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PAGE 03/00

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FIRST LEGAL

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Attorneys for Defendant  
 7-ELEVEN, INC.

**ENDORSED**  
 JAN 11 2008

SUPERIOR COURT  
 IMPERIAL COUNTY  
 JUDGE C. GILLESPIE, CLERK  
 BY MONICA PERRY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF IMPERIAL**

**KIMBERLY ALEKSICK**, individually and on  
 behalf of other members of the general public  
 similarly situated,

Plaintiff,

v.

**7-ELEVEN, INC.**, a Texas Corporation;  
**MICHAEL TUCKER**, an individual; and **DOES**  
 1-50, inclusive.,

Defendants.

**CASE NO. ECU03615**

Assigned for All Purposes to:  
 Hon. Christopher W. Yeager, Department 7

**NOTICE TO CLERK OF THE  
 SUPERIOR COURT, COUNTY OF  
 IMPERIAL, OF REMOVAL OF CIVIL  
 ACTION TO UNITED STATES  
 DISTRICT COURT FOR THE  
 SOUTHERN DISTRICT OF  
 CALIFORNIA**

Date Action Filed: April 16, 2007

**TO THE CLERK OF THE SUPERIOR COURT, COUNTY OF IMPERIAL:**

PLEASE TAKE NOTICE that on January 10, 2008, defendant 7-ELEVEN, INC.  
 filed in the United States District Court for the Southern District of California its Petition and  
 Notice of Removal of Civil Action. A copy of this Petition and Notice is attached as Exhibit "A"  
 hereto.

**NOTICE TO CLERK OF THE SUPERIOR COURT RE: REMOVAL OF CIVIL ACTION**

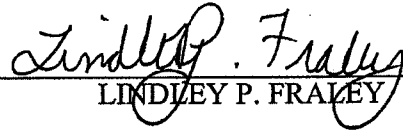
**PAYNE & FEARS LLP**

ATTORNEYS AT LAW  
 4 PARK PLAZA, SUITE 1100  
 IRVINE, CA 92614  
 (949) 851-1100

1 PLEASE TAKE FURTHER NOTICE that pursuant to 28 U.S.C. § 1446(d), the  
2 filing of the Petition and Notice in the United States District Court, together with the filing of a  
3 copy thereof with this Superior Court, effects the removal of this action, and this Superior Court  
4 may proceed no further unless and until the action is remanded.

5  
6 DATED: JANUARY 11, 2008 PAYNE & FEARS LLP

7  
8 By: \_\_\_\_\_

  
LINDLEY P. FRALEY

9  
10 Attorneys for Defendant  
7-ELEVEN, INC.

11 381856

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**INDEX OF EXHIBITS**

EXHIBIT "A": PETITION AND NOTICE OF REMOVAL OF CIVIL ACTION UNDER  
28 U.S.C. §§ 1441 AND 1446

**EXHIBIT A, PAGE 6**



**EXHIBIT "A" TO NOTICE TO THE CLERK**

**EXHIBIT A, PAGE 7**

COPY

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Attorneys for Defendant  
7-ELEVEN, INC.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

KIMBERLY ALEKSICK,  
individually and on behalf of other  
members of the general public  
similarly situated,

Plaintiffs,

v.

7-ELEVEN, INC., a Texas  
Corporation, MICHAEL TUCKER;  
an individual; and DOES 1-50,  
Inclusive,

Defendants.

CASE NO. 08 CV 0059 J WMC

PETITION AND NOTICE OF  
REMOVAL OF CIVIL ACTION  
UNDER 28 U.S.C. §§ 1332, 1441 AND  
1446

Defendant 7-Eleven, Inc. ("7-Eleven") hereby gives notice pursuant to 28  
U.S.C. §§ 1332, 1441 and 1446 of the removal to this Court of the action

FILED  
2008 JAN 10 PM 3:46  
CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_ DEPUTY

1 commenced against it in the Superior Court of the State of California, County of  
2 Imperial, styled Kimberly Aleksick v. 7-Eleven, Inc., et al. (ECU03615) ("State  
3 Court Action"). The following facts support this removal:

4 **PROCEDURAL HISTORY**

5 1. On or about April 16, 2007, Plaintiff Kimberly Aleksick ("Plaintiff")  
6 filed a Complaint against 7-Eleven and its franchisee Michael Tucker in the  
7 Superior Court for the State of California, County of Imperial. Attached hereto as  
8 Exhibit "A" is a true and correct copy of the Complaint, Civil Case Cover Sheet  
9 and Summons.

10 2. On June 1, 2007, 7-Eleven filed its Answer to the Complaint.  
11 Attached hereto as Exhibit "B" is a true and correct copy of 7-Eleven's Answer.

12 3. The Superior Court noticed a Case Management Conference for  
13 August 14, 2007. Attached hereto as Exhibit "C" is a true and correct copy of the  
14 Court's Notice.

15 4. The Court continued the Case Management Conference to August 23,  
16 2007 in an Order dated August 8, 2007. Attached hereto as Exhibit "D" is a true  
17 and correct copy of the Court's Order.

18 5. On July 11, 2007, 7-Eleven filed a *Pro Hac Vice* Application for the  
19 admission of Eric A. Welter. Attached hereto as Exhibit "E" is a true and correct  
20 copy of the Application.

21 6. On July 17, 2007, 7-Eleven filed a Case Management Statement.  
22 Attached hereto as Exhibit "F" is a true and correct copy of the Statement.

23 7. On July 18, 2007, Plaintiff's counsel filed a Notice of Plaintiff's  
24 Counsel's Unavailability to Appear at the Case Management Conference and  
25 Request to Continue the CMC, along with a Proposed Order granting the Request.  
26 Attached hereto as Exhibit "G" is a true and correct copy of the Notice, Request,  
27 and Proposed Order.  
28

1       8.     On July 19, 2007, Defendant Michael Tucker filed an Answer to  
2 Plaintiff's Complaint. Attached hereto as Exhibit "H" is a true and correct copy of  
3 Mr. Tucker's Answer.

4       9.     On July 19, 2007, Plaintiff filed a Notice of No Opposition to the *Pro*  
5 *Hac Vice* Application for Eric A. Welter. Attached hereto as Exhibit "I" is a true  
6 and correct copy of the Notice.

7       10.    On July 25, 2007, Plaintiff filed a Case Management Statement for the  
8 Case Management Conference on August 14, 2007. Attached hereto as Exhibit "J"  
9 is a true and correct copy of the Statement.

10       11.    On July 31, 2007, Defendant Michael Tucker filed a Case  
11 Management Statement for the Case Management Conference on August 14, 2007.  
12 Attached hereto as Exhibit "K" is a true and correct copy of the Statement.

13       12.    On August 1, 2007, the Court issued a Notice of Hearing for the *Pro*  
14 *Hac Vice* Application of Eric A. Welter. Attached hereto as Exhibit "L" is a true  
15 and correct copy of the Notice of Hearing.

16       13.    On August 8, 2007, 7-Eleven filed a Notice of Intent to Appear at the  
17 Case Management Conference by Telephone. Attached hereto as Exhibit "M" is a  
18 true and correct copy of the Notice.

19       14.    On August 8, 2007, the Court issued an Order continuing the Case  
20 Management Conference to August 23, 2007. Attached hereto as Exhibit "N" is a  
21 true and correct copy of the Court's Order.

22       15.    On August 23, 2007, the Court issued a Case Management Order  
23 setting a Case Management Conference for September 25, 2007. Attached hereto  
24 as Exhibit "O" is a true and correct copy of the Court's Case Management Order.

25       16.    7-Eleven provided notice of the Class Action Case Conference to all  
26 Parties. Attached hereto as Exhibit "P" is a true and correct copy of the Notice of  
27 Class Action Case Conference.  
28

1        17. On September 6, 2007, attorneys for Michael Tucker provided a  
2 Notice of Change of Firm Name. Attached hereto as Exhibit "Q" is a true and  
3 correct copy of the Notice of Change of Firm Name.

4        18. On September 12, 2007, 7-Eleven filed a Case Management  
5 Statement. Attached hereto as Exhibit "R" is a true and correct copy of the Case  
6 Management Statement.

7        19. On September 12, 2007, the Court granted Eric A. Welter's *Pro Hac*  
8 *Vice* Application. Attached hereto as Exhibit "S" is a true and correct copy of the  
9 Court's Order.

10       20. On September 25, 2007, the Court issued a Case Management Order  
11 setting a Case Management Conference for December 21, 2007. Attached hereto  
12 as Exhibit "T" is a true and correct copy of the Court's Order.

13       21. On December 4, 2007, 7-Eleven filed a Case Management Statement  
14 and a Notice of Intent to Appear Telephonically. Attached hereto as Exhibit "U" is  
15 a true and correct copy of the Case Management Statement and Notice.

16       22. On December 5, 2007, Defendant Michael Tucker filed a Case  
17 Management Statement. Attached hereto as Exhibit "V" is a true and correct copy  
18 of the Statement.

19       23. On December 17, 2007, Plaintiff filed an *Ex Parte* Application for an  
20 Order Compelling "Pioneer/Belaire" Notice, or in the Alternative, For An Order  
21 Shortening Time To Hear Plaintiff's Request for an Order Compelling  
22 "Pioneer/Belaire" Notice. Attached hereto as Exhibit "W" is a true and correct  
23 copy of the Application.

24       24. On December 13, 2007, Plaintiff's counsel faxed to counsel for 7-  
25 Eleven Plaintiff's First Amended Complaint ("FAC"). Attached hereto as Exhibit  
26 "X" is a true and correct copy of the FAC.

27       25. On January 9, 2008, 7-Eleven timely filed an answer to Plaintiff's  
28 FAC. Attached hereto as Exhibit "Y" is a true and correct copy of the Answer.

1        26. Exhibits "A" through "Y" hereto constitute the pleadings, process and  
2 orders served upon or by 7-Eleven in the State Court Action.

3  
4                                    **JURISDICTION**

5        27. The original Complaint contained several causes of action based on  
6 alleged violations of the California Labor Code by Tucker. Count 1 alleged  
7 violations of the California Labor Code by Tucker for failure to provide meal or  
8 rest breaks, failure to pay overtime compensation, requiring employees to pay for  
9 uniforms, and noncompliant wage stubs. Count 2 alleged a claim under Business  
10 and Professions Code section 17200 for the same alleged violations.

11        28. The original Complaint did not state a federal question and was not  
12 removable on the basis of diversity jurisdiction because Tucker is a resident of  
13 California.

14        29. The original Complaint was not removable under the Class Action  
15 Fairness Act ("CAFA"), 28 U.S.C. § 1332(d). Plaintiff's original Complaint  
16 framed the putative class as "Plaintiff and her former co-workers" (*Compl.* ¶ 10)  
17 and "Plaintiff and similarly situated employees" (*Compl.* ¶ 11). Plaintiff was an  
18 employee of franchisee Michael Tucker. Even assuming that 7-Eleven was found  
19 to be Plaintiff's "employer," which was extremely unlikely under California law  
20 (see ¶ 4 below), there was no legal basis in the original Complaint to extrapolate  
21 the putative class to franchisees other than Michael Tucker. As such, Plaintiff's  
22 "co-workers" would not likely have numbered over the 100 required for  
23 jurisdiction under the CAFA nor would 7-Eleven have been able to establish an  
24 amount in controversy greater than \$5,000,000 as required by the CAFA.

25        30. The claims in the original Complaint were all premised upon alleged  
26 Labor Code violations by 7-Eleven's franchisee, Michael Tucker. The California  
27 courts have repeatedly upheld the independent contractor relationship between 7-  
28 Eleven and its franchisees, holding that 7-Eleven is not the employer of its



franchisee's employees nor is it an agent of the franchisee. Singh v. 7-Eleven, Inc., 2007 WL 715488 (N.D.Cal. 2007); Cislaw v. Southland Corp., 4 Cal.App.4th 1284 (1992); Wickham v. Southland Corp., 168 Cal.App.3d 49 (1985); see also Chelkova v. Southland Corp., 771 N.E.2d 1100 (Ill. App. 2002); Daves v. Southland Corp., 2000 WL 60199 (Wash. App. 2000); Hatcher v. Augustus, 956 F.Supp. 387 (E.D.N.Y. 1997). Indeed, there is a paucity of reported decisions nationwide holding franchisors liable for the wage and hour violations of its franchisee. See, e.g., Howell v. Chick-Fil-A, Inc., 1993 WL 603296, \*2 n.2 (N.D.Fla. 1993) (noting in FLSA case brought by employee of franchisee against franchisor that that court has "not discovered a reported case in which a franchisor has been held liable to an employee of an independent contractor."). Thus, given that the original Complaint involved at most two 7-Eleven stores operated by franchisee Michael Tucker, the original Complaint did not satisfy the jurisdictional limits under the CAFA.

31. On December 17, 2007, 7-Eleven received Plaintiff's First Amended Complaint by facsimile.

32. The First Amended Complaint is a substantially new complaint. It includes new claims against 7-Eleven that are fundamentally different from those in the original Complaint. The new claims include negligence, negligence per se, and negligent interference with prospective economic advantage, and a claim for penalties under California Labor Code section 2699.

33. Plaintiff's "negligence" claims seek to impose direct liability on 7-Eleven for its practices in providing payroll services to its franchisees. Thus, the "negligence" claims do not depend on a finding that 7-Eleven was Plaintiff's "employer." These claims, for the first time, potentially implicate all of 7-Eleven's approximately 1,200 franchise stores in California.

34. Removal here is governed by 28 U.S.C. § 1446(b). Section 1446(b) provides, in pertinent part, "[i]f the case stated by the initial pleading is not

1 removable, a notice of removal may be filed within thirty days after receipt by the  
2 defendant, through service or otherwise, of a copy of an amended pleading,  
3 motion, order or other paper from which it may first be ascertained that the case is  
4 one which is or has become removable.”

5 35. The three “negligence” claims asserted directly against 7-Eleven in  
6 the First Amended Complaint are not dependent upon 7-Eleven’s status as an  
7 “employer.” Rather, the First Amended Complaint asserts a completely new  
8 theory of liability directly against 7-Eleven: that 7-Eleven acted negligently in  
9 operating its payroll system for its franchisees. (*See, e.g., First Amd. Compl.*  
10 ¶¶ 22, 24-25). As discussed in more detail below, the First Amended Complaint is  
11 an amended pleading from which it may first be ascertained that the case is  
12 removable, and 7-Eleven has filed this removal within thirty (30) days of its  
13 receipt.

14 36. The State Court Action is a civil action of which this Court has  
15 original jurisdiction under 28 U.S.C. § 1332(d), and is one which may be removed  
16 to this Court by 7-Eleven pursuant to 28 U.S.C. § 1441, in that:

- 17 a. 7-Eleven is a corporation incorporated in and under the laws of the  
18 State of Texas, and it is and has been at all material times a citizen of  
19 that state. 7-Eleven’s corporate headquarters and principal place of  
20 business is in Dallas, Texas. 7-Eleven is not a citizen of the State of  
21 California. (*See First Amd. Compl.* ¶ 5).
- 22 b. Plaintiff is a resident of the State of California. (*First Amd. Compl.* ¶  
23 4).
- 24 c. According to Plaintiff, the potential class consists of 5,000  
25 individuals. (*First Amd. Comp.* ¶ 11). Assuming that the putative  
26 class now includes the employees of 7-Eleven’s approximately 1,200  
27 franchise stores in California (which the original Complaint could not  
28 have), 7-Eleven’s records indicate there were approximately 19,000



1 individuals employed by its franchisees in California for some period  
2 of time during 2006.

3 d. The matter in controversy exceeds the sum or value of \$5,000,000,  
4 exclusive of interest and costs. To determine the amount in  
5 controversy, the Court “must assume that the allegations in the  
6 complaint are true.” Forever Living Prods. U.S. Inc. v. Geyman, 471  
7 F.Supp.2d 980, 986 (D.Ariz. 2006); Kenneth Rothschild Trust v.  
8 Morgan Stanley Dean Witter, 199 F.Supp.2d 993, 1001 (C.D.Cal.  
9 2002).

10 (a) Plaintiff alleges that the potential class consists of 5,000  
11 individuals, “100%” of whom were denied meal and rest  
12 breaks and not provided the mandated payment required by  
13 law. (*FAC*, ¶¶ 11, 14A).

14 1. Under Plaintiff’s sixth claim for relief under California  
15 Labor Code section 2699, an employer is liable for a  
16 \$100 penalty for the initial violation and \$200 for each  
17 subsequent violation. The relevant limitations period for  
18 this claim is one year. Cal. Code Civ. Proc. § 340.  
19 Assuming that Plaintiff’s allegation that 100% of the  
20 class was denied the meal and rest breaks during each  
21 work week during the one year limitations period, the  
22 potential damages on this claim amounts to \$51,500,000  
23  $(5,000 * \$100 + 5,000 * \$200 * 51)$ .

24 2. The minimum wage in California during a substantial  
25 part of the potential class period here was \$6.75. The  
26 relevant limitations period on Plaintiff’s section 17200  
27 restitution claim is four years. California Bus. & Prof.  
28 Code § 17208. Based on Plaintiff’s allegations that

1 “100%” of the employees in California were deprived of  
2 meal and rest breaks and not paid the hour of pay due  
3 each week due to 7-Eleven’s payroll system, the potential  
4 damages on that claim would amount to \$7,020,000  
5 (\$6.75 a week \* 52 weeks \* 5,000 putative class  
6 members\* 4 years).

7 (b) 7-Eleven’s records indicate that there were approximately  
8 19,000 individuals employed by its 1,215 franchise stores  
9 in California in 2006 and that the average hourly wage of  
10 those individuals as of February 2007 was \$8.48.

11 1. Looking again at Plaintiff’s claim under California Labor  
12 Code § 2699, assuming only two violations per putative  
13 plaintiff during the one-year limitations period, the  
14 potential damages on this claim alone would amount to  
15 \$5,700,000 (19,000 \* 300).

16 2. Looking at Plaintiff’s meal and rest break claim,  
17 assuming that the putative class members were not paid  
18 the statutorily required one-hour of pay for each week  
19 during the year prior to the commencement of this case,  
20 the potential damages on this claim would amount to  
21 \$8,378,240 (19,000 \* 52 \* 8.48).

22 e. 7-Eleven has established the elements necessary for removal under the  
23 CAFA, 28 U.S.C. § 1332(d).

24 37. The United States District Court for the Southern District of  
25 California, San Diego Division, is the District Court of the United States and the  
26 Division thereof embracing the place where the State Court Action is pending prior  
27 to removal.  
28

**CONCLUSION**

38. Because 7-Eleven has established the necessary elements for removal pursuant to 28 U.S.C. § 1332(d), 7-Eleven respectfully requests that this Court exercise its removal jurisdiction over this action.

DATED: January 10, 2008

PAYNE & FEARS LLP

By: Lindley P. Fraley  
LINDLEY P. FRALEY

Attorneys for Defendant  
7-ELEVEN, INC.

381800

**EXHIBITS “A” TO “Y” TO THE PETITION AND  
NOTICE OF REMOVAL HAS ALREADY BEEN  
SUBMITTED TO THE COURT, AND DUE TO  
HIGH VOLUME OF PAGES ARE NOT BEING  
INCLUDED IN THIS DOCUMENT.**

**(SEE INDEX OF EXHIBITS AND PAGE NUMBERS  
WHICH WERE PREVIOUSLY FILED WITH THE COURT  
AS PAPER COPIES)**

**WE WILL GLADLY RESUBMIT (VIA E-FILE) COPIES  
OF THESE EXHIBITS, AT THE COURT’S REQUEST**

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1	Exhibit "U"	Case Management Statement and Notice to Appear	112-120
2		Telephonically at CMC (7-Eleven)	
3	Exhibit "V"	Case Management Statement (Michael Tucker)	121-130
4	Exhibit "W"	Ex Parte Application for an Order (Plaintiff)	131-152
5	Exhibit "X"	First Amended Complaint (Plaintiff)	153-199
6	Exhibit "Y"	Answer to First Amended Complaint (7-Eleven)	200-211

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**PROOF OF SERVICE***Alesick vs. 7-Eleven, Inc.*

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

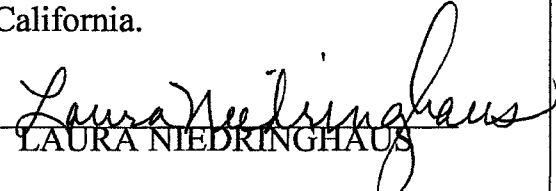
I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On January 10, 2008, I served the following document(s) described as **PETITION AND NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. §§ 1441 AND 1446** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

**SEE ATTACHED SERVICE LIST**

- ☐ **(BY U.S. Mail)** I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.
- ☐ **(By Personal Service)** I caused to be delivered by hand on the interested parties in this action by placing the above mentioned document(s) thereof in envelope addressed to the office of the addressee(s) listed above or on attached sheet.
- ☐ **(By Facsimile)** I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e), calling for agreement and written confirmation of that agreement or court order, to the number(s) listed above or on attached sheet. Said transmission was reported complete and without error.
- ☒ **(By Overnight Courier)** served the above referenced document(s) enclosed in a sealed package, for collection and for delivery marked for next day delivery in the ordinary course of business, addressed to the office of the addressee(s) listed above or on attached sheet.
- ☐ **(By E-Mail)** I transmitted a copy of the foregoing documents(s) via e-mail to the addressee(s).
- ☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 10, 2008, at Irvine, California.

  
LAURA NIEDRINGHAUS

**EXHIBIT A, PAGE 21**

PROOF OF SERVICE

PAYNE &amp; FEARS LLP

ATTORNEYS AT LAW  
4 PARK PLAZA, SUITE 1100  
IRVINE, CA 92614  
(949) 851-1100



PAYNE & FEARS LLP

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(949) 851-1100

**SERVICE LIST**

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Eric A. Welter, Esq. Attorneys for Defendant  
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720 Lynn St., Suite B  
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Fax: (703) 435-8851

Paul C. Johnson Jr. Attorneys for Defendant  
Bacalski & Ottoson, LLP Michael Tucker  
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San Diego, CA 92101  
Tel: (619) 239-4340  
Fax: (619) 239-0116

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**EXHIBIT A, PAGE 22**

PROOF OF SERVICE



**EXHIBIT "B" DECLARATION OF PROOF OF SERVICE**

PAYNE & FEARS LLP  
ATTORNEYS AT LAW  
4 PARK PLAZA, SUITE 1100  
IRVINE, CA 92614  
(949) 851-1100

PAYNE & FEARS LLP  
Attorneys at Law  
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WELTER LAW FIRM, P.C.  
Eric A. Welter, Virginia Bar No. 38193  
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Herndon, Virginia 20170  
Telephone: 703-435-8500  
Facsimile: 703-435-8851

Attorneys for Defendant  
7-ELEVEN, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF IMPERIAL**

KIMBERLY ALEKSICK, individually and on  
behalf of other members of the general public  
similarly situated,

Plaintiff,

v.

7-ELEVEN, INC., a Texas Corporation;  
MICHAEL TUCKER; an individual; and DOES  
1-50, Inclusive.,

Defendants.

CASE NO. ECU03615

Assigned for All Purposes to:  
Hon. Christopher W. Yeager, Department 7

**NOTICE TO PLAINTIFF OF REMOVAL  
OF CIVIL ACTION TO UNITED  
STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF  
CALIFORNIA**

Date Action Filed: April 16, 2007

TO PLAINTIFF KIMBERLY ALEKSICK AND HER ATTORNEYS OF  
RECORD:

PLEASE TAKE NOTICE that on January 10, 2008, defendant 7-ELEVEN, INC.  
filed in the United States District Court for the Southern District of California its Petition and  
Notice of Removal of Civil Action. A copy of this Petition and Notice is attached as Exhibit "A"  
hereto.

**EXHIBIT B, PAGE 23**

NOTICE TO PLAINTIFF RE: REMOVAL OF CIVIL ACTION

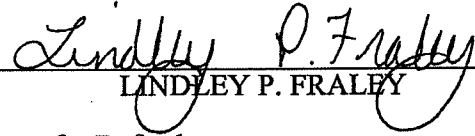
PAYNE & FEARS LLP

ATTORNEYS AT LAW  
4 PARK PLAZA, SUITE 1100  
IRVINE, CA 92614  
(949) 851-1100

1 DATED: JANUARY 11, 2008

PAYNE & FEARS LLP

2  
3 By:



LINDLEY P. FRALEY

4  
5 Attorneys for Defendant  
6 7-ELEVEN, INC.  
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**EXHIBIT "A" TO NOTICE TO PLAINTIFF**

**EXHIBIT B, PAGE 25**

FILED

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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY \_\_\_\_\_ DEPUTY

COPY

ERIC C. SOHLGREN, Bar No. 161710  
ecs@paynefears.com  
LINDLEY P. FRALEY, Bar No. 223421  
lpf@paynefears.com  
PAYNE & FEARS LLP  
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Attorneys for Defendant  
7-ELEVEN, INC.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

KIMBERLY ALEKSICK,  
individually and on behalf of other  
members of the general public  
similarly situated,

Plaintiffs,

v.

7-ELEVEN, INC., a Texas  
Corporation, MICHAEL TUCKER;  
an individual; and DOES 1-50,  
Inclusive,

Defendants.

CASE NO. 08 CV 0059 J WMC

PETITION AND NOTICE OF  
REMOVAL OF CIVIL ACTION  
UNDER 28 U.S.C. §§ 1332, 1441 AND  
1446

Defendant 7-Eleven, Inc. ("7-Eleven") hereby gives notice pursuant to 28  
U.S.C. §§ 1332, 1441 and 1446 of the removal to this Court of the action

1 commenced against it in the Superior Court of the State of California, County of  
2 Imperial, styled Kimberly Aleksick v. 7-Eleven, Inc., et al. (ECU03615) ("State  
3 Court Action"). The following facts support this removal:

4 **PROCEDURAL HISTORY**

5 1. On or about April 16, 2007, Plaintiff Kimberly Aleksick ("Plaintiff")  
6 filed a Complaint against 7-Eleven and its franchisee Michael Tucker in the  
7 Superior Court for the State of California, County of Imperial. Attached hereto as  
8 Exhibit "A" is a true and correct copy of the Complaint, Civil Case Cover Sheet  
9 and Summons.

10 2. On June 1, 2007, 7-Eleven filed its Answer to the Complaint.  
11 Attached hereto as Exhibit "B" is a true and correct copy of 7-Eleven's Answer.

12 3. The Superior Court noticed a Case Management Conference for  
13 August 14, 2007. Attached hereto as Exhibit "C" is a true and correct copy of the  
14 Court's Notice.

15 4. The Court continued the Case Management Conference to August 23,  
16 2007 in an Order dated August 8, 2007. Attached hereto as Exhibit "D" is a true  
17 and correct copy of the Court's Order.

18 5. On July 11, 2007, 7-Eleven filed a *Pro Hac Vice* Application for the  
19 admission of Eric A. Welter. Attached hereto as Exhibit "E" is a true and correct  
20 copy of the Application.

21 6. On July 17, 2007, 7-Eleven filed a Case Management Statement.  
22 Attached hereto as Exhibit "F" is a true and correct copy of the Statement.

23 7. On July 18, 2007, Plaintiff's counsel filed a Notice of Plaintiff's  
24 Counsel's Unavailability to Appear at the Case Management Conference and  
25 Request to Continue the CMC, along with a Proposed Order granting the Request.  
26 Attached hereto as Exhibit "G" is a true and correct copy of the Notice, Request,  
27 and Proposed Order.  
28

1           8.     On July 19, 2007, Defendant Michael Tucker filed an Answer to  
2 Plaintiff's Complaint. Attached hereto as Exhibit "H" is a true and correct copy of  
3 Mr. Tucker's Answer.

4           9.     On July 19, 2007, Plaintiff filed a Notice of No Opposition to the *Pro*  
5 *Hac Vice* Application for Eric A. Welter. Attached hereto as Exhibit "I" is a true  
6 and correct copy of the Notice.

7           10.    On July 25, 2007, Plaintiff filed a Case Management Statement for the  
8 Case Management Conference on August 14, 2007. Attached hereto as Exhibit "J"  
9 is a true and correct copy of the Statement.

10          11.    On July 31, 2007, Defendant Michael Tucker filed a Case  
11 Management Statement for the Case Management Conference on August 14, 2007.  
12 Attached hereto as Exhibit "K" is a true and correct copy of the Statement.

13          12.    On August 1, 2007, the Court issued a Notice of Hearing for the *Pro*  
14 *Hac Vice* Application of Eric A. Welter. Attached hereto as Exhibit "L" is a true  
15 and correct copy of the Notice of Hearing.

16          13.    On August 8, 2007, 7-Eleven filed a Notice of Intent to Appear at the  
17 Case Management Conference by Telephone. Attached hereto as Exhibit "M" is a  
18 true and correct copy of the Notice.

19          14.    On August 8, 2007, the Court issued an Order continuing the Case  
20 Management Conference to August 23, 2007. Attached hereto as Exhibit "N" is a  
21 true and correct copy of the Court's Order.

22          15.    On August 23, 2007, the Court issued a Case Management Order  
23 setting a Case Management Conference for September 25, 2007. Attached hereto  
24 as Exhibit "O" is a true and correct copy of the Court's Case Management Order.

25          16.    7-Eleven provided notice of the Class Action Case Conference to all  
26 Parties. Attached hereto as Exhibit "P" is a true and correct copy of the Notice of  
27 Class Action Case Conference.  
28

1        17. On September 6, 2007, attorneys for Michael Tucker provided a  
2 Notice of Change of Firm Name. Attached hereto as Exhibit "Q" is a true and  
3 correct copy of the Notice of Change of Firm Name.

4        18. On September 12, 2007, 7-Eleven filed a Case Management  
5 Statement. Attached hereto as Exhibit "R" is a true and correct copy of the Case  
6 Management Statement.

7        19. On September 12, 2007, the Court granted Eric A. Welter's *Pro Hac*  
8 *Vice* Application. Attached hereto as Exhibit "S" is a true and correct copy of the  
9 Court's Order.

10       20. On September 25, 2007, the Court issued a Case Management Order  
11 setting a Case Management Conference for December 21, 2007. Attached hereto  
12 as Exhibit "T" is a true and correct copy of the Court's Order.

13       21. On December 4, 2007, 7-Eleven filed a Case Management Statement  
14 and a Notice of Intent to Appear Telephonically. Attached hereto as Exhibit "U" is  
15 a true and correct copy of the Case Management Statement and Notice.

16       22. On December 5, 2007, Defendant Michael Tucker filed a Case  
17 Management Statement. Attached hereto as Exhibit "V" is a true and correct copy  
18 of the Statement.

19       23. On December 17, 2007, Plaintiff filed an *Ex Parte* Application for an  
20 Order Compelling "Pioneer/Belaire" Notice, or in the Alternative, For An Order  
21 Shortening Time To Hear Plaintiff's Request for an Order Compelling  
22 "Pioneer/Belaire" Notice. Attached hereto as Exhibit "W" is a true and correct  
23 copy of the Application.

24       24. On December 13, 2007, Plaintiff's counsel faxed to counsel for 7-  
25 Eleven Plaintiff's First Amended Complaint ("FAC"). Attached hereto as Exhibit  
26 "X" is a true and correct copy of the FAC.

27       25. On January 9, 2008, 7-Eleven timely filed an answer to Plaintiff's  
28 FAC. Attached hereto as Exhibit "Y" is a true and correct copy of the Answer.



1        26. Exhibits "A" through "Y" hereto constitute the pleadings, process and  
2 orders served upon or by 7-Eleven in the State Court Action.

3  
4                                    **JURISDICTION**

5        27. The original Complaint contained several causes of action based on  
6 alleged violations of the California Labor Code by Tucker. Count 1 alleged  
7 violations of the California Labor Code by Tucker for failure to provide meal or  
8 rest breaks, failure to pay overtime compensation, requiring employees to pay for  
9 uniforms, and noncompliant wage stubs. Count 2 alleged a claim under Business  
10 and Professions Code section 17200 for the same alleged violations.

11        28. The original Complaint did not state a federal question and was not  
12 removable on the basis of diversity jurisdiction because Tucker is a resident of  
13 California.

14        29. The original Complaint was not removable under the Class Action  
15 Fairness Act ("CAFA"), 28 U.S.C. § 1332(d). Plaintiff's original Complaint  
16 framed the putative class as "Plaintiff and her former co-workers" (*Compl.* ¶ 10)  
17 and "Plaintiff and similarly situated employees" (*Compl.* ¶ 11). Plaintiff was an  
18 employee of franchisee Michael Tucker. Even assuming that 7-Eleven was found  
19 to be Plaintiff's "employer," which was extremely unlikely under California law  
20 (see ¶ 4 below), there was no legal basis in the original Complaint to extrapolate  
21 the putative class to franchisees other than Michael Tucker. As such, Plaintiff's  
22 "co-workers" would not likely have numbered over the 100 required for  
23 jurisdiction under the CAFA nor would 7-Eleven have been able to establish an  
24 amount in controversy greater than \$5,000,000 as required by the CAFA.

25        30. The claims in the original Complaint were all premised upon alleged  
26 Labor Code violations by 7-Eleven's franchisee, Michael Tucker. The California  
27 courts have repeatedly upheld the independent contractor relationship between 7-  
28 Eleven and its franchisees, holding that 7-Eleven is not the employer of its

franchisee's employees nor is it an agent of the franchisee. Singh v. 7-Eleven, Inc., 2007 WL 715488 (N.D.Cal. 2007); Cislav v. Southland Corp., 4 Cal.App.4th 1284 (1992); Wickham v. Southland Corp., 168 Cal.App.3d 49 (1985); see also Chelkova v. Southland Corp., 771 N.E.2d 1100 (Ill. App. 2002); Daves v. Southland Corp., 2000 WL 60199 (Wash. App. 2000); Hatcher v. Augustus, 956 F.Supp. 387 (E.D.N.Y. 1997). Indeed, there is a paucity of reported decisions nationwide holding franchisors liable for the wage and hour violations of its franchisee. See, e.g., Howell v. Chick-Fil-A, Inc., 1993 WL 603296, \*2 n.2 (N.D.Fla. 1993) (noting in FLSA case brought by employee of franchisee against franchisor that that court has "not discovered a reported case in which a franchisor has been held liable to an employee of an independent contractor."). Thus, given that the original Complaint involved at most two 7-Eleven stores operated by franchisee Michael Tucker, the original Complaint did not satisfy the jurisdictional limits under the CAFA.

31. On December 17, 2007, 7-Eleven received Plaintiff's First Amended Complaint by facsimile.

32. The First Amended Complaint is a substantially new complaint. It includes new claims against 7-Eleven that are fundamentally different from those in the original Complaint. The new claims include negligence, negligence per se, and negligent interference with prospective economic advantage, and a claim for penalties under California Labor Code section 2699.

33. Plaintiff's "negligence" claims seek to impose direct liability on 7-Eleven for its practices in providing payroll services to its franchisees. Thus, the "negligence" claims do not depend on a finding that 7-Eleven was Plaintiff's "employer." These claims, for the first time, potentially implicate all of 7-Eleven's approximately 1,200 franchise stores in California.

34. Removal here is governed by 28 U.S.C. § 1446(b). Section 1446(b) provides, in pertinent part, "[i]f the case stated by the initial pleading is not

1 removable, a notice of removal may be filed within thirty days after receipt by the  
2 defendant, through service or otherwise, of a copy of an amended pleading,  
3 motion, order or other paper from which it may first be ascertained that the case is  
4 one which is or has become removable.”

5 35. The three “negligence” claims asserted directly against 7-Eleven in  
6 the First Amended Complaint are not dependent upon 7-Eleven’s status as an  
7 “employer.” Rather, the First Amended Complaint asserts a completely new  
8 theory of liability directly against 7-Eleven: that 7-Eleven acted negligently in  
9 operating its payroll system for its franchisees. (*See, e.g., First Amd. Compl.*  
10 ¶¶ 22, 24-25). As discussed in more detail below, the First Amended Complaint is  
11 an amended pleading from which it may first be ascertained that the case is  
12 removable, and 7-Eleven has filed this removal within thirty (30) days of its  
13 receipt.

14 36. The State Court Action is a civil action of which this Court has  
15 original jurisdiction under 28 U.S.C. § 1332(d), and is one which may be removed  
16 to this Court by 7-Eleven pursuant to 28 U.S.C. § 1441, in that:

- 17 a. 7-Eleven is a corporation incorporated in and under the laws of the  
18 State of Texas, and it is and has been at all material times a citizen of  
19 that state. 7-Eleven’s corporate headquarters and principal place of  
20 business is in Dallas, Texas. 7-Eleven is not a citizen of the State of  
21 California. (*See First Amd. Compl.* ¶ 5).
- 22 b. Plaintiff is a resident of the State of California. (*First Amd. Compl.* ¶  
23 4).
- 24 c. According to Plaintiff, the potential class consists of 5,000  
25 individuals. (*First Amd. Comp.* ¶ 11). Assuming that the putative  
26 class now includes the employees of 7-Eleven’s approximately 1,200  
27 franchise stores in California (which the original Complaint could not  
28 have), 7-Eleven’s records indicate there were approximately 19,000

1 individuals employed by its franchisees in California for some period  
2 of time during 2006.

3 d. The matter in controversy exceeds the sum or value of \$5,000,000,  
4 exclusive of interest and costs. To determine the amount in  
5 controversy, the Court "must assume that the allegations in the  
6 complaint are true." Forever Living Prods. U.S. Inc. v. Geyman, 471  
7 F.Supp.2d 980, 986 (D.Ariz. 2006); Kenneth Rothschild Trust v.  
8 Morgan Stanley Dean Witter, 199 F.Supp.2d 993, 1001 (C.D.Cal.  
9 2002).

10 (a) Plaintiff alleges that the potential class consists of 5,000  
11 individuals, "100%" of whom were denied meal and rest  
12 breaks and not provided the mandated payment required by  
13 law. (*FAC*, ¶¶ 11, 14A).

14 1. Under Plaintiff's sixth claim for relief under California  
15 Labor Code section 2699, an employer is liable for a  
16 \$100 penalty for the initial violation and \$200 for each  
17 subsequent violation. The relevant limitations period for  
18 this claim is one year. Cal. Code Civ. Proc. § 340.  
19 Assuming that Plaintiff's allegation that 100% of the  
20 class was denied the meal and rest breaks during each  
21 work week during the one year limitations period, the  
22 potential damages on this claim amounts to \$51,500,000  
23  $(5,000 * \$100 + 5,000 * \$200 * 51)$ .

24 2. The minimum wage in California during a substantial  
25 part of the potential class period here was \$6.75. The  
26 relevant limitations period on Plaintiff's section 17200  
27 restitution claim is four years. California Bus. & Prof.  
28 Code § 17208. Based on Plaintiff's allegations that

1 “100%” of the employees in California were deprived of  
 2 meal and rest breaks and not paid the hour of pay due  
 3 each week due to 7-Eleven’s payroll system, the potential  
 4 damages on that claim would amount to \$7,020,000  
 5 (\$6.75 a week \* 52 weeks \* 5,000 putative class  
 6 members\* 4 years).

7 (b) 7-Eleven’s records indicate that there were approximately  
 8 19,000 individuals employed by its 1,215 franchise stores  
 9 in California in 2006 and that the average hourly wage of  
 10 those individuals as of February 2007 was \$8.48.

11 1. Looking again at Plaintiff’s claim under California Labor  
 12 Code § 2699, assuming only two violations per putative  
 13 plaintiff during the one-year limitations period, the  
 14 potential damages on this claim alone would amount to  
 15 \$5,700,000 (19,000 \* 300).

16 2. Looking at Plaintiff’s meal and rest break claim,  
 17 assuming that the putative class members were not paid  
 18 the statutorily required one-hour of pay for each week  
 19 during the year prior to the commencement of this case,  
 20 the potential damages on this claim would amount to  
 21 \$8,378,240 (19,000 \* 52 \* 8.48).

22 e. 7-Eleven has established the elements necessary for removal under the  
 23 CAFA, 28 U.S.C. § 1332(d).

24 37. The United States District Court for the Southern District of  
 25 California, San Diego Division, is the District Court of the United States and the  
 26 Division thereof embracing the place where the State Court Action is pending prior  
 27 to removal.  
 28

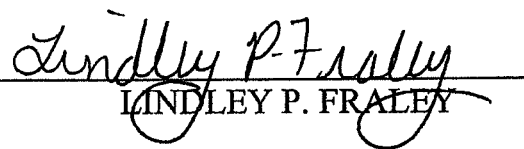
**CONCLUSION**

38. Because 7-Eleven has established the necessary elements for removal pursuant to 28 U.S.C. § 1332(d), 7-Eleven respectfully requests that this Court exercise its removal jurisdiction over this action.

DATED: January 10, 2008

PAYNE & FEARS LLP

By:

  
LINDLEY P. FRALEY

Attorneys for Defendant  
7-ELEVEN, INC.

381800



**EXHIBITS “A” TO “Y” TO THE PETITION AND  
NOTICE OF REMOVAL HAS ALREADY BEEN  
SUBMITTED TO THE COURT, AND DUE TO  
HIGH VOLUME OF PAGES ARE NOT BEING  
INCLUDED IN THIS DOCUMENT.**

**(SEE INDEX OF EXHIBITS AND PAGE NUMBERS  
WHICH WERE PREVIOUSLY FILED WITH THE COURT  
AS PAPER COPIES)**

**WE WILL GLADLY RESUBMIT (VIA E-FILE) COPIES  
OF THESE EXHIBITS, AT THE COURT’S REQUEST**

## INDEX OF EXHIBITS

*Alesick vs. 7-Eleven, Inc.*

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6	Exhibit "C" Court's Notice of CMC on 8/14/07	35
7	Exhibit "D" Court's Order to continue Case Management Conference	36-38
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10	Exhibit "F" Case Management Statement (7-Eleven)	53-57
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27	Exhibit "T" Case Management Order setting CMC for 12/21/07	110-111
28		



**PAYNE & FEARS LLP**

ATTORNEYS AT LAW  
4 PARK PLAZA, SUITE 1100  
IRVINE, CA 92614  
(949) 851-1100

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**PROOF OF SERVICE***Alesick vs. 7-Eleven, Inc.*

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

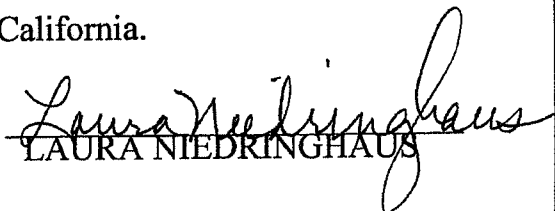
I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On January 10, 2008, I served the following document(s) described as **PETITION AND NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. §§ 1441 AND 1446** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

**SEE ATTACHED SERVICE LIST**

- ☐ **(BY U.S. Mail)** I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.
- ☐ **(By Personal Service)** I caused to be delivered by hand on the interested parties in this action by placing the above mentioned document(s) thereof in envelope addressed to the office of the addressee(s) listed above or on attached sheet.
- ☐ **(By Facsimile)** I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e), calling for agreement and written confirmation of that agreement or court order, to the number(s) listed above or on attached sheet. Said transmission was reported complete and without error.
- ☒ **(By Overnight Courier)** served the above referenced document(s) enclosed in a sealed package, for collection and for delivery marked for next day delivery in the ordinary course of business, addressed to the office of the addressee(s) listed above or on attached sheet.
- ☐ **(By E-Mail)** I transmitted a copy of the foregoing documents(s) via e-mail to the addressee(s).
- ☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 10, 2008, at Irvine, California.

  
LAURA NIEDRINGHAUS

**EXHIBIT B, PAGE 39**

PAYNE & FEARS LLP

ATTORNEYS AT LAW  
4 PARK PLAZA, SUITE 1100  
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(949) 851-1100

**SERVICE LIST**

William B. Sullivan, Esq. Attorneys For Plaintiff  
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Eric A. Welter, Esq. Attorneys for Defendant  
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Tel: (703) 435-8500  
Fax: (703) 435-8851

Paul C. Johnson Jr. Attorneys for Defendant  
Bacalski & Ottoson, LLP Michael Tucker  
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San Diego, CA 92101  
Tel: (619) 239-4340  
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**EXHIBIT B, PAGE 40**

PROOF OF SERVICE

**PROOF OF SERVICE**

*Alesick vs. 7-Eleven, Inc.*  
*Case No. ECU03615*

STATE OF CALIFORNIA, COUNTY OF ORANGE

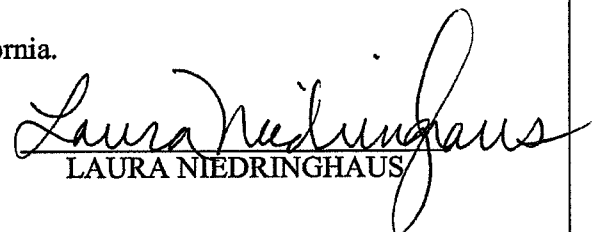
I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On January 11, 2008, I served the following document(s) described as **NOTICE TO PLAINTIFF OF REMOVAL OF CIVIL ACTION TO UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

**SEE ATTACHED SERVICE LIST**

- ☐ **(BY U.S. Mail)** I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.
- ☐ **(By Personal Service)** I caused to be delivered by hand on the interested parties in this action by placing the above mentioned document(s) thereof in envelope addressed to the office of the addressee(s) listed above or on attached sheet.
- ☐ **(By Facsimile)** I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e), calling for agreement and written confirmation of that agreement or court order, to the number(s) listed above or on attached sheet. Said transmission was reported complete and without error.
- ☒ **(By Overnight Courier)** served the above referenced document(s) enclosed in a sealed package, for collection and for delivery marked for next day delivery in the ordinary course of business, addressed to the office of the addressee(s) listed above or on attached sheet.
- ☐ **(By E-Mail)** I transmitted a copy of the foregoing documents(s) via e-mail to the addressee(s).
- ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 11, 2008, at Irvine, California.

  
 LAURA NIEDRINGHAUS

**EXHIBIT B, PAGE 41**

PROOF OF SERVICE

PAYNE & FEARS LLP  
 ATTORNEYS AT LAW  
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Attorneys for Defendant  
7-ELEVEN, INC.

Paul C. Johnson Jr.  
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Fax: (619) 239-0116

Attorneys for Defendant  
Michael Tucker

365308.1

**EXHIBIT B, PAGE 42**

PROOF OF SERVICE

**EXHIBIT "C" DECLARATION OF PROOF OF SERVICE**

**PROOF OF SERVICE***Alesick vs. 7-Eleven, Inc.*

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

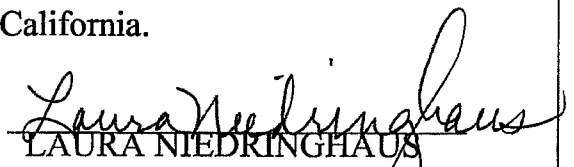
I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On January 10, 2008, I served the following document(s) described as **PETITION AND NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. §§ 1441 AND 1446** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

**SEE ATTACHED SERVICE LIST**

- ☐ **(BY U.S. Mail)** I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.
- ☐ **(By Personal Service)** I caused to be delivered by hand on the interested parties in this action by placing the above mentioned document(s) thereof in envelope addressed to the office of the addressee(s) listed above or on attached sheet.
- ☐ **(By Facsimile)** I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e), calling for agreement and written confirmation of that agreement or court order, to the number(s) listed above or on attached sheet. Said transmission was reported complete and without error.
- ☒ **(By Overnight Courier)** served the above referenced document(s) enclosed in a sealed package, for collection and for delivery marked for next day delivery in the ordinary course of business, addressed to the office of the addressee(s) listed above or on attached sheet.
- ☐ **(By E-Mail)** I transmitted a copy of the foregoing documents(s) via e-mail to the addressee(s).
- ☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 10, 2008, at Irvine, California.

  
LAURA NIEDRINGHAUS

**EXHIBIT C, PAGE 43**

PAYNE & FEARS LLP  
ATTORNEYS AT LAW  
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(949) 851-1100

**SERVICE LIST**

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Eric A. Welter, Esq. Attorneys for Defendant  
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Herndon, Virginia 20170  
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Fax: (703) 435-8851

Paul C. Johnson Jr. Attorneys for Defendant  
Bacalski & Ottoson, LLP Michael Tucker  
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San Diego, CA 92101  
Tel: (619) 239-4340  
Fax: (619) 239-0116

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**EXHIBIT "D" DECLARATION OF PROOF OF SERVICE**

14-Jan-2008 09:49 AM 17145411978 6/6  
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PAGE 06/06

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**PROOF OF SERVICE**

JAN 11 2008

*Alastair vs. 7-Eleven, Inc.*  
 Case No. ECU03615

SUPERIOR COURT  
 IMPERIAL COUNTY  
 JUDGE D. GUILLEN, CLERK  
 BY MICHAEL S. SNEY  
 1/11/08

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On January 11, 2008, I served the following document(s) described as NOTICE TO CLERK OF THE SUPERIOR COURT, COUNTY OF IMPERIAL, OF REMOVAL OF CIVIL ACTION TO UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

**SEE ATTACHED SERVICE LIST**

PAYNE & FEARS LLP  
 ATTORNEYS AT LAW  
 4 PARK PLAZA, SUITE 1100  
 IRVINE, CA 92614  
 (949) 261-4108

☐ (BY U.S. Mail) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.

☐ (By Personal Service) I caused to be delivered by hand on the interested parties in this action by placing the above mentioned document(s) thereof in envelope addressed to the office of the addressee(s) listed above or on attached sheet.

☐ (By Facsimile) I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e), calling for agreement and written confirmation of that agreement or court order, to the number(s) listed above or on attached sheet. Said transmission was reported complete and without error.

☒ (By Overnight Courier) served the above referenced document(s) enclosed in a sealed package, for collection and for delivery marked for next day delivery in the ordinary course of business, addressed to the office of the addressee(s) listed above or on attached sheet.

☐ (By E-Mail) I transmitted a copy of the foregoing documents(s) via e-mail to the addressee(s).

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 11, 2008, at Irvine, California.

  
 LAURA NIEDRINGHAUS

PROOF OF SERVICE

**EXHIBIT D, PAGE 45**

PAYNE & FEARS LLP  
ATTORNEYS AT LAW  
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IRVINE, CA 92614  
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**SERVICE LIST**

William B. Sullivan, Esq. Attorneys For Plaintiff  
SULLIVAN & CHRISTIANI, LLP KIMBERLY ALEKSICK  
2330 Third Avenue  
San Diego, CA 92101  
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Eric A. Welter, Esq. Attorneys for Defendant  
WELTER LAW FIRM, P.C. 7-ELEVEN, INC.  
720 Lynn St., Suite B  
Herndon, Virginia 20170  
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Fax: (703) 435-8851

Paul C. Johnson Jr. Attorneys for Defendant  
Bacalski & Ottoson, LLP Michael Tucker  
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San Diego, CA 92101  
Tel: (619) 239-4340  
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381945.1

**EXHIBIT "E" DECLARATION OF PROOF OF SERVICE**

**PROOF OF SERVICE**

*Alesick vs. 7-Eleven, Inc.*  
*Case No. ECU03615*

STATE OF CALIFORNIA, COUNTY OF ORANGE

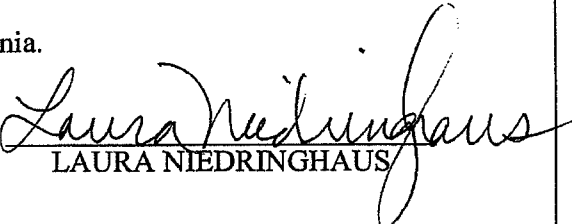
I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On January 11, 2008, I served the following document(s) described as **NOTICE TO PLAINTIFF OF REMOVAL OF CIVIL ACTION TO UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

**SEE ATTACHED SERVICE LIST**

- ☐ (BY U.S. Mail) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.
- ☐ (By Personal Service) I caused to be delivered by hand on the interested parties in this action by placing the above mentioned document(s) thereof in envelope addressed to the office of the addressee(s) listed above or on attached sheet.
- ☐ (By Facsimile) I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e), calling for agreement and written confirmation of that agreement or court order, to the number(s) listed above or on attached sheet. Said transmission was reported complete and without error.
- ☒ (By Overnight Courier) served the above referenced document(s) enclosed in a sealed package, for collection and for delivery marked for next day delivery in the ordinary course of business, addressed to the office of the addressee(s) listed above or on attached sheet.
- ☐ (By E-Mail) I transmitted a copy of the foregoing documents(s) via e-mail to the addressee(s).
- ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 11, 2008, at Irvine, California.

  
 LAURA NIEDRINGHAUS

**EXHIBIT E, PAGE 47**

PAYNE & FEARS LLP

ATTORNEYS AT LAW  
4 PARK PLAZA, SUITE 1100  
IRVINE, CA 92614  
(949) 851-1100

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**SERVICE LIST**

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Attorneys for Defendant  
7-ELEVEN, INC.

Paul C. Johnson Jr.  
Bacalski & Ottoson, LLP  
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San Diego, CA 92101  
Tel: (619) 239-4340  
Fax: (619) 239-0116

Attorneys for Defendant  
Michael Tucker

365308.1

**PROOF OF SERVICE**

*USDC – Southern District - 08 CV 0059 J WMc  
Alesick vs. 7-Eleven, Inc.*

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

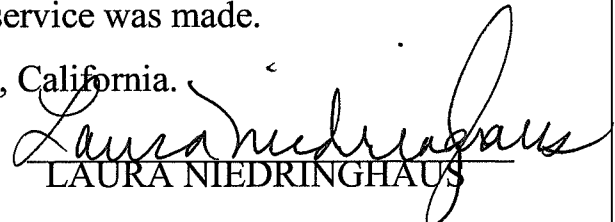
I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On January 14, 2008, I served the following document(s) described as  
**DECLARATION RE: (1) SERVICE OF PETITION AND NOTICE OF REMOVAL UPON PLAINTIFF; (2) FILING OF NOTICE TO CLERK IN IMPERIAL COUNTY SUPERIOR COURT; AND (3) FILING OF PROOFS OF SERVICE** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

**SEE ATTACHED SERVICE LIST**

- ☒ **(BY U.S. Mail)** I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.
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- ☐ **(By E-Mail)** I transmitted a copy of the foregoing documents(s) via e-mail to the addressee(s).
- ☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 14, 2008, at Irvine, California.

  
LAURA NIEDRINGHAUS

**SERVICE LIST**

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Attorneys for Defendant  
Michael Tucker

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